

Barbara Enloe Hadsell, Esq. [S.B. #086021]  
bhadsell@hadsellstormer.com  
Dan Stormer, Esq. [S.B. #101967]  
dstormer@hadsellstormer.com  
Lauren Teukolsky Esq. [S.B. #211381]  
lauren@hskrr.com  
HADSELL STORMER KEENY  
RICHARDSON & RENICK LLP  
128 North Fair Oaks Avenue  
Pasadena, California 91103-3645  
Telephone: (626) 585-9600  
Facsimile: (626) 577-7079

[Counsel For Plaintiffs Continued On Next Page]

Attorneys for All Plaintiffs

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

LARRY BOWOTO, et. al.,  
  
Plaintiffs,  
  
v.  
  
CHEVRON CORPORATION, et al.  
  
Defendants.

Case No: C 99-02506 SI

[Assigned to the Honorable Susan Illston,  
Courtroom 10, 19th floor]

**PLAINTIFFS' BENCH BRIEF RE:  
ANTICIPATING QUESTIONING OF  
WATTS BY DEFENDANTS;  
DECLARATION AND EXHIBIT IN  
SUPPORT THEREOF**

Trial Date: October 27, 2008  
Time: 10:00 a.m.

Counsel for Plaintiffs  
(continued from first page)

THERESA TRABER, ESQ. [S.B.#116305]  
tmt@tvlegal.com

BERT VOORHEES, ESQ. [S.B. #137623]  
bv@tvlegal.com

LAURA FAER, ESQ. [S.B. # 233846]  
lf@tvlegal.com

TRABER & VOORHEES  
128 North Fair Oaks Avenue, Suite 204  
Pasadena, California 91103  
Telephone: (626) 585-9611  
Facsimile: (626) 577-7079

CINDY A. COHN, ESQ. [S.B.#145997]  
cindy@eff.org  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell St.  
San Francisco, California 94110  
Telephone: (415) 436-9333, Ext. 108  
Facsimile: (415) 436-9993

RICHARD HERZ, ESQ.  
rick@earthrights.org  
MARCO SIMONS, ESQ. [S.B. #237314]  
marco@earthrights.org  
EARTHRIGHTS INTERNATIONAL  
1612 K Street N.W., Suite 401  
Washington, DC 20006  
Telephone: (202) 466-5188  
Facsimile: (202) 466-5189

MICHAEL S. SORGEN, ESQ. [S.B. #43107]  
msorgen@sorgen.net  
LAW OFFICES OF MICHAEL S. SORGEN  
240 Stockton Street, 9<sup>th</sup> Floor  
San Francisco, California 94108  
Tel: (415) 956-1360 Fax: (415) 956-6342

JOSE LUIS FUENTES, ESQ. [S.B.#192236]  
jlf499@sbcglobal.net  
SIEGEL & YEE  
499 14th Street, Suite 220  
Oakland, CA 94612  
Tel: (510) 839-1200 Fax: (510) 444-6698

JUDITH BROWN CHOMSKY, ESQ.  
jchomsky@igc.org  
LAW OFFICES OF JUDITH BROWN  
CHOMSKY  
Post Office Box 29726  
Elkins Park, PA 19027  
Telephone: (215) 782-8367  
Facsimile: (215) 782-8368

JENNIFER M. GREEN, ESQ.  
jgreen@ccr-ny.org  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
Telephone: (212) 614-6431  
Facsimile: (212) 614-6499

PAUL HOFFMAN, ESQ. [S.B.# 71244]  
hoffpaul@ix.netcom.com  
SCHONBRUN, DESIMONE, SEPLOW,  
HARRIS & HOFFMAN LLP  
723 Ocean Front Walk  
Venice, California 90210  
Telephone: (310) 396-0731  
Facsimile: (310) 399-7040

ROBERT D. NEWMAN, ESQ.  
[S.B. #086534]  
rnewman@wclp.org  
LAW OFFICE OF ROBERT D. NEWMAN  
3701 Wilshire Blvd., Suite 208  
Los Angeles, California 90010  
Telephone: (213) 487-4727  
Facsimile: (213) 487-0242

ANTHONY DICAPRIO, ESQ.  
ad@humanrightslawyers.com  
RATNER, DICAPRIO & CHOMSKY, LLP  
110 E. 59<sup>th</sup> Street  
New York, NY 10022  
Telephone: (212) 604 9466  
Facsimile: (212) 604 9467

RICHARD R. WIEBE [S.B. #121156]  
wiebe@pacbell.net  
LAW OFFICE OF RICHARD R WIEBE  
425 California Street, #2025  
San Francisco, CA 94104  
Telephone: (415) 433-3200  
Facsimile: (415) 433-6382

**POINTS AND AUTHORITIES**

**I. FACTUAL STATEMENT**

Plaintiffs' claims in this lawsuit arise out of violent attacks on them by the Nigerian military on the Parabe oil platform in May 1998. Plaintiffs have designated as one of their experts Michael Watts, whose deposition was taken by defendants in 2005. Mr. Watts is a Professor of Geography at the University of California, Berkeley, and has been designated by plaintiffs to testify regarding the background of the Niger Delta area, including joint ventures with petroleum companies, oil operations, and their effects on the communities in the Delta.

Based on questioning during his deposition, plaintiffs anticipate that Defendants will attempt to elicit testimony from Professor Watts regarding areas that are completely irrelevant to the issues at hand, including violence by other tribes occurring after the Parabe incident. Defendants' counsel Robert Mittelstaedt asked Professor Watts such questions during the vast majority of the deposition. For example, Mr. Mittelstaedt asked him:

Q: Are you familiar with any occasions when people in the Niger Delta held oil co-workers hostage?

Mr. Watts responded:

A: A specific instance occurred when I was in Nigeria in the summer of 2004 -- this must have been at the end of July -- on a platform near Sangana.

(Watts Depo. Vol 1 at 44:6-18, attached as Exhibit A to Richardson Declaration). Mr. Watts testified that the persons involved in that incident were Ijaw. (*Id.* at 49:15-22).

Another topic on which Mittelstaedt questioned Professor Watts at length (over 35 pages of the transcript) was the occupation by the Ijaw from a town called Nembe of a Shell platform. (*See, e.g., Id.* at 43:11- 44:4). However, that incident took place in 2000.

Mr. Mittelstaedt also elicited testimony that the Ijaws in the Niger Delta are armed with AK-47's. (*Id.* at 53:23 - 54:1). The questioning regarding the Ijaws continued on for many hours, was quite extensive and went over many different incidents.

This questioning is designed, plaintiffs believe, to prejudice and mislead the jury into attributing to the plaintiffs acts that occurred after the fact and by other people. Such questioning would raise issues

that have nothing to do with the state of mind of individuals at the time of the incident, since these incidents occurred after the incident. Moreover, since they involve largely the Ijaw peoples and not the Ilaje, this testimony would confuse the jury and invite them to condemn the Ilaje for acts which were not committed by them.<sup>1</sup>

## **II. ARGUMENT**

The Court should exclude and disallow the anticipated questioning for the following reasons: (1) it is not relevant under Federal Rules 401 and 402; (2) it will not elicit admissible testimony because evidence of prior bad acts is not admissible to show actions in conformity therewith pursuant to Federal Rules 404(b); and (3) such questioning would be highly prejudicial under Federal Rules of Evidence 403.

### **A. These Alleged Incidents Are Not Relevant To Issues In This Case Pursuant To Federal Rules Of Evidence 401 and 402**

Incidents of alleged kidnapping, takeovers or other acts of violence in years post-dating the Parabe incident and having to do with the Ijaw people are not relevant to the issues in this case. Under Federal Rules of Evidence 401, “‘relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Under Federal Rule of Evidence 402, “[e]vidence which is not relevant is not admissible.” Fed. R. Evid. 402. The alleged violent acts committed by the Ijaw and post-dating the Parabe incident have no relationship to the incident at issue in this case and therefore have no relevance.

### **B. These Alleged Incidents Are Not Admissible As “Other Acts” To Show Actions In Conformity Therewith Pursuant to Federal Rule of Evidence 404(b)**

Defendants may attempt to argue that these incidents should be admitted under Rule 404(b), which provides that evidence of “other crimes, wrongs, or acts,” which are not admissible to show character or propensity, may be admitted for other purposes, such as motive or intent. However, evidence of incidents that happened subsequent to the May 1998 Parabe incident, and by other people

---

<sup>1</sup> Plaintiffs have included with this motion some of the evidence reflecting defendants’ repeated inquiry at the deposition into violence subsequent to May of 1998 and involving the Ijaw. Both days of Professor Watts’ deposition contained extensive questioning on the subject.

can by definition have nothing to do with the motive or intent of any of the parties involved in the 1998 Parabe incident. As clearly stated in Rule 404(b), “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” *See also United States v. McCourt*, 925 F.2d 1229, 1238 (9th Cir. 1991). Therefore, such evidence is inadmissible under Rule 404(b).

**C. Allowing Testimony about Unrelated, Subsequent Events involving Allegations of Tribal Violence Into Evidence Would Be Highly Prejudicial Under Federal Rule of Evidence 403**

Finally, the introduction of this evidence would be highly prejudicial. Even relevant evidence may “be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading to the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. “‘Unfair prejudice’ means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *Cohn v. Papke*, 655 F.2d 191, 194 (9th Cir. 1981) (quoting Advisory Committee’s Notes to Federal Rule of Evidence 403).

The only purpose that could be served by the introduction of this evidence would be to attempt to depict the Plaintiffs as having a propensity toward violent behavior and thus, to convince the jury to apply more lenient standards to the military’s attacks on them. The risk of prejudice in introducing this evidence is great. The jury could be misled and confused by the presentation of irrelevant evidence of incidents having to do with Ijaw people unrelated to the plaintiffs and occurring after the incidents which gave rise to this case. Plaintiffs would be forced to put on responsive evidence demonstrating that the alleged incidents had nothing to do with them, occurred well after the May 1998 Parabe incident. This evidence could also serve to inflame the passions of the jury against the plaintiffs and the plaintiffs’ communities, or at least, to confuse them. The introduction of such evidence presents the risk that the jury will draw conclusions about the appropriateness of the military’s conduct that are unfairly prejudicial and contrary to law.

///

///

1 **III. CONCLUSION**

2 For the foregoing reasons, the Plaintiffs respectfully request that the Court preclude defendants'  
3 counsel from questioning expert Michael Watts regarding incidents of violence having to do with people  
4 unrelated to the plaintiffs, and occurring well after the May 1998 Parabe incident.

5  
6 Dated: October 26, 2008

Respectfully Submitted,

8 HADSELL STORMER KEENY  
9 RICHARDSON & RENICK LLP

10 By \_\_\_\_\_/s/\_\_\_\_\_  
11 Barbara Hadsell  
12 Attorneys for Plaintiffs  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Richardson Declaration**

**DECLARATION OF ANNE RICHARDSON**

I, Anne Richardson, declare as follows:

1. I am a partner at the law firm of Hadsell Stormer Keeny Richardson & Renick, LLP, counsel for plaintiffs in this matter. I am admitted to the Northern District of California. I have personal knowledge of the facts stated herein and if called upon to do so could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of the deposition of Michael Watts taken on November 18, 2005.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed this 24<sup>th</sup> day of October, 2008, in Pasadena, California.

\_\_\_\_\_  
/s/  
Anne Richardson

# **Exhibit 1**

LARRY BOWOTO, et al., )  
Plaintiffs, )  
vs. ) No. C-99-2506-SI  
CHEVRONTEXACO CORPORATION, et al., )  
Defendants. ) VOLUME 1  
) PAGES 1 - 237

d813e511-8bc8-4d8b-a33f-24ac353862b9

1 occupying?

2 MS. TEUKOLSKY: Objection. Overbroad.

3 Compound. Lacks foundation. Vague.

4 THE WITNESS: That is not clear to me.

5 Many of these youth groups were paid what were 10:06:20

6 locally called standby payments by the company. This

7 has nothing to do with occupations. I would have to

8 go and check my notes to determine whether the

9 occupations produced payments as a condition for

10 their exiting the installation. I don't recall. 10:06:47

11 BY MR. MITTELSTAEDT:

12 Q. Do you have any information as to how many

13 Nembe Ijaws took over the Shell facilities? The

14 number?

15 A. I do not -- 10:07:02

16 MS. TEUKOLSKY: Objection. Overbroad.

17 Compound.

18 THE WITNESS: I do not have that

19 information. It may be in my notes, but I do not

20 have it right now. 10:07:10

21 BY MR. MITTELSTAEDT:

22 Q. Do you have any information on whether

23 there were any Shell workers at the installations,

24 that were held hostage?

25 MS. TEUKOLSKY: Objection. Argumentative. 10:07:20

1 Overbroad. Lacks foundation. Vague. Object to the  
2 use of the word "hostage."

3 THE WITNESS: I do not have any  
4 information.

5 BY MR. MITTELSTAEDT:

10:07:31

6 Q. Are you familiar with any occasions when  
7 people in the Niger Delta held oil co-workers  
8 hostage?

9 MS. TEUKOLSKY: Objection. Lacks  
10 foundation. Vague.

10:07:42

11 THE WITNESS: I have read reports in the  
12 Nigerian press documenting -- in which they document  
13 such instances.

14 BY MR. MITTELSTAEDT:

15 Q. Can you remember any specific instances?

10:07:55

16 A. A specific instance occurred when I was in  
17 Nigeria in the summer of 2004 -- this must have been  
18 at the end of July -- on a platform near Sangana.

19 Q. Tell me what happened at that time.

20 MS. TEUKOLSKY: Objection. Lacks  
21 foundation. Calls for speculation. Calls for a  
22 narrative.

10:08:28

23 THE WITNESS: I was informed that a  
24 number -- I do not know the number -- of people from  
25 the immediate communities occupied a platform and

10:08:44

1 A. The materials?

2 Q. Yes.

3 A. These are simply Xerox copies or, in some  
4 cases, newspaper clippings that I clipped, myself,  
5 from local newspapers in Nigeria when I was making my 10:15:09  
6 trips there.

7 Q. And some of those materials, you believe  
8 refer to occupations and hostage-taking?

9 A. They do.

10 Q. And are you planning to make those 10:15:22  
11 available, or should I ask you now to make them  
12 available?

13 A. If you wish, I will make them available.

14 Q. Thank you.

15 What ethnic group was involved in the July 10:15:31  
16 2004 occupation and hostage-taking?

17 MS. TEUKOLSKY: Objection to the use of  
18 the phrase "hostage-taking." Assumes facts not in  
19 evidence. Lacks foundation.

20 THE WITNESS: The people involved in the 10:15:58  
21 Sangana case were, to the best of my knowledge, all  
22 Ijaw.

23 BY MR. MITTELSTAEDT:

24 Q. And was there what you consider  
25 hostage-taking in that incident? 10:16:07

1 available in the Niger Delta are accurate?

2 MS. TEUKOLSKY: Objection. Lacks  
3 foundation.

4 THE WITNESS: The reports that I'm  
5 thinking of, one set were produced by a civic group, 10:20:25  
6 a nonprofit organization, and I frankly cannot speak  
7 to its research capacity. A second is that some  
8 reports by the human rights organizations have  
9 referred to the widespread availability of arms  
10 without, per se, being detailed case studies of them, 10:20:53  
11 which seemed to me to be quite respectable.

12 BY MR. MITTELSTAEDT:

13 Q. When you were interviewing the Nembe  
14 Ijaws, did you ask them whether they were armed?

15 A. I do not recall asking that question. 10:21:14

16 Q. Have you ever talked with Patterson Ogon  
17 as to whether he has any information about the Ijaws  
18 in the Niger Delta being armed?

19 MS. TEUKOLSKY: Objection. Vague.

20 THE WITNESS: I have not talked to 10:21:34  
21 Mr. Ogon about that issue.

22 BY MR. MITTELSTAEDT:

23 Q. Have you ever read or heard that the Ijaws  
24 in the Niger Delta have AK-47s in their armories?

25 A. I believe that some of the reports I refer 10:21:59

1 to refer to those weapons.

2 Q. Do you think that kidnapping of oil  
3 workers for ransom is a favored tactic of militants  
4 in the Niger Delta?

5 MS. TEUKOLSKY: Objection. Vague. Lacks 10:22:21  
6 foundation. Goes beyond the scope of this witness's  
7 designation as an expert in this action.

8 THE WITNESS: That's not an arena on which  
9 I have expert knowledge, per se.

10 BY MR. MITTELSTAEDT: 10:22:34

11 Q. Do you think Oronto Douglas has expert  
12 knowledge on that subject?

13 MS. TEUKOLSKY: Objection. Lacks  
14 foundation. Calls for speculation.

15 THE WITNESS: I do not know. 10:22:43

16 BY MR. MITTELSTAEDT:

17 Q. Or Von Kemedi?

18 MS. TEUKOLSKY: Same objections.

19 THE WITNESS: I do not believe so.

20 BY MR. MITTELSTAEDT: 10:22:53

21 Q. Do you have any information, whether  
22 you're an expert in it or not, that kidnapping of oil  
23 workers for ransom is a favored tactic of militants  
24 in the Niger Delta?

25 MS. TEUKOLSKY: Objection. Vague. 10:23:09

1 STATE OF CALIFORNIA )

2 ) SS

3 CITY AND COUNTY OF SAN FRANCISCO )

4  
5 I, DEIRDRE F. CRAM, CSR NO. 9339, a  
6 Certified shorthand Reporter of the State of  
7 California, do hereby certify:

8 That the foregoing proceedings were  
9 taken before me at the time and place herein set  
10 forth; that any witnesses in the foregoing  
11 proceedings, prior to testifying, stated that they  
12 would tell the truth under penalty of perjury; that a  
13 verbatim record of the proceedings was made by me  
14 using machine shorthand which was transcribed under  
15 my direction; further, that the foregoing is an  
16 accurate transcription thereof.

17 I further certify that I am neither  
18 financially interested in the outcome of the action,  
19 nor a relative or employee of any attorney or of any  
20 parties.

21 IN WITNESS WHEREOF, I have this date  
22 subscribed my name.

23 Dated:

24  
25 DEIRDRE F. CRAM, C.S.R. 9339